

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

NATHAN VANBUREN

1:16-CR-243-ODE-JFK
(First Superceding Indictment)

MOTION TO STRIKE SURPLUSAGE IN THE INDICTMENT

NATHAN VANBUREN, by and through undersigned counsel, hereby moves this Court, pursuant to Fed. R. Crim. Proc. 7(d), to strike surplusage from the Superceding Indictment in this case. In support of this Motion, Mr. VanBuren offers the following:

(1)

Rule 7(d) of the Federal Rules of Criminal Procedure authorizes the Court to strike surplusage from an indictment on motion of the defendant. Fed. R. Crim. Proc. 7(d).

(2)

The purpose of Rule 7(d) is to protect a defendant against prejudicial allegations that are neither relevant nor material to the charges in the indictment, are not essential to the charge, are unnecessary, or are inflammatory. *United States v. Poore*, 594 F.2d 39 (4th Cir. 1979). *See United States v. Freeman*, 619 F.2d 1112

(5th Cir. 1980).

(3)

The Superseding Indictment charges Mr. VanBuren with: Counts 1 and 2: knowingly devising and intending to devise a scheme to defraud and deprive citizens of Cumming Georgia, and the Cumming Police Department, of the intangible right of honest services through bribery and the concealment of material information via wire fraud in violation of 18 U.S.C. §§ 1343, 1346 and 1349 and Count 3: intentionally exceeding his authorized access to the GCIC database in order to obtain information for private financial gain, in violation of 18 U.S.C. §§ 1030(a)(2)(C), (c)(2)(B)(i). (Doc. 37).

(4)

The government has informed defense counsel that it plans to move to dismiss Count One. This Count alleges that Mr. VanBuren sent a text message via his cellular telephone to a cooperating witness “seeking payment for searching the GCIC database.” Because the government is unable to prove that this message affected interstate commerce, as required for a successful prosecution pursuant to 18 U.S.C. Section 1343, the government will not proceed with this charge at trial. However, it intends to introduce hearsay, specifically the statements of the cooperating witness, by introducing his statements through a federal agent as described in paragraphs 12 and 13: Count 12: on or about August 31, 2015, A.A. sent VanBuren

text messages containing the license plate number that was purportedly being used by the woman, so that VanBuren could run the plate number VanBuren replied to the citizen's text messages with a request for money for having the license plate number searched; Count 13: on or about August 31, 2015, the citizen provided VanBuren with \$1,000 in exchange for VanBuren's agreement to have the license plate number searched.

Undersigned counsel submits that this testimony constitutes inadmissible evidence, and is unreliable. The cooperating witness – Andrew Albo – will not testify in the upcoming trial, and has not been subject to cross-examination by Mr. VanBuren. Crawford v. Washington, 541 U.S 36 (2004); Fed. R. Evid. 801(c). Inclusion of this evidence is unnecessary and prejudicial, and does not meet the standard set out by Rule 7(c).

WHEREFORE, Mr. VanBuren respectfully requests that paragraphs 12 and 13 should be stricken.

Dated: This 20th day of October, 2017.

Respectfully Submitted,

/s/ Regina D. Cannon
REGINA D. CANNON
GEORGIA BAR NO. 679579
ATTORNEY FOR MR. VANBUREN

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion has been formatted in Times New Roman 14 pt., in accordance with Local Rule 5.1B, and was electronically filed this day with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following counsel of record:

Jeffrey A. Brown
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Suite 600, Richard B. Russell Building
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Dated: This 20th day of October, 2017.

/s/ Regina D. Cannon
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